

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, } No. 14 CR 390
Plaintiff, } Chicago, Illinois
-vs- } December 17, 2014
KEVIN JOHNSON and TYLER LANG, } 9:35 o'clock a.m.
Defendants. }

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE MILTON I. SHADUR

APPEARANCES:

For the Plaintiff: HON. ZACHARY T. FARDON
United States Attorney, by
MS. BETHANY K. BIESENTHAL
MS. NANCY L. DePODESTA
Assistant United States Attorney
(219 S. Dearborn Street
Chicago, Illinois 60604)

For Defendant Johnson: PEOPLE'S LAW OFFICES
1180 North Milwaukee Avenue
Chicago, Illinois 60622
BY: MR. MICHAEL E. DEUTSCH

For Defendant Lang: FEDERAL DEFENDER PROGRAM
55 East Monroe Street
Suite 2800
Chicago, Illinois 60603
BY: MR. GEOFFREY M. MEYER

ALSO PRESENT: MR. CHRISTOPHER COOPER
MR. ABRAHAM R. WAGNER

Court Reporter: ROSEMARY SCARPELLI
219 South Dearborn Street
Room 2304A
Chicago, Illinois 60604
(312) 435-5815

1 THE CLERK: 14 CR 390, The United States versus
2 Johnson and Lang.

3 MR. DEUTSCH: Good morning, your Honor, Michael
4 Deutsch for Kevin Johnson.

5 MR. MEYER: Good morning, Judge, Geoffrey Meyer on
6 behalf of Mr. Lang.

7 MS. BIESENTHAL: Good morning, your Honor, Bethany
8 Biesenthal and Nancy DePodesta for the United States.

9 MR. COOPER: Good morning, your Honor, Christopher
10 Cooper on behalf of amici.

11 MR. WAGNER: Abraham Wagner with Mr. Cooper on
12 behalf of amici.

13 THE COURT: Well, counsel, why don't you sit down
14 and let me talk a little, and then I will hear from you. As
15 I am sure all of you know, I have previously rejected a
16 professor's proposed amicus brief in support of the
17 defendant's position. Now, I must confess that living as I
18 do either in the 19th or maybe the mid-20th Century I am not
19 a fan of or a participant in Facebook. So I choose my
20 friends, my amici, they don't choose me.

21 Now, I don't fault Attorney Cooper for listing this
22 current motion as unopposed, although as it turns out what
23 that -- defense counsel said "okay" on the mistaken belief
24 that what was being sought was leave to file something that
25 was favorable to their position. But what is critical in any

1 event is that the motion, whether it is opposed or unopposed,
2 seeks leave to file an amicus brief, and that leave is for
3 the Court, not the movants to rule upon.

4 So what has been reported to me by the docketing
5 people in the Clerk's Office that reports, I regret to say,
6 somewhat heavy-handed conduct by Attorney Cooper is really
7 out of bounds. I read from an e-mail that was sent to my
8 courtroom deputy here -- I will read only a part of it -- it
9 says, "The attorney says we should be adding him to the
10 docket because he is a friend of the court." Well, just
11 briefly put, he is not a friend of the court and it is not
12 the lawyer who decides whether to be added to the docket.

13 In a sense it is sort of ironic that what counsel
14 wants to stake out is a position in support of a statute that
15 I guess some overeager legislators chose to burden with the
16 label "animal terrorism," a word that all of us know doesn't
17 appear in the statute at all. But counsel feels free to --
18 if this account is accurate, to engage in a kind of
19 unpleasantness terrorism, if you will, with a clerk who is
20 just trying to do her job.

21 Let me shift, however, to a more substantive point
22 of view and more importantly. I have to tell you I find the
23 approach that has been taken by the movants quite
24 unacceptable. Look at the quotes that one of the counsel --
25 I guess it is Mr. Deutsch -- yeah -- he quotes from the

1 motion for leave to file some animal rights -- there is a
2 word missing there somehow -- such as "The defendants in this
3 case have moved well beyond speech and other acts of criminal
4 violence such as firebombs, flooding, stalking, harassment
5 and other acts against amici in a concerted effort to force
6 them to abandon their professional activities. Both
7 defendants have been engaged in these activities in
8 California since at least 2008 against several of the amici."

9 And then later on in -- there is a reference to say
10 that scientists targeted by these extremists, including both
11 defendants in the present case, have been the targets of a
12 widespread campaign of intimidation or wildness."

13 Now, you know, if this case were to go to trial,
14 such bad man characterization would never reach the jury.
15 Federal Rule of Evidence 404(b) would bar them. Is it
16 somehow proper for me as a judge who is going to be deciding
17 on a legal issue of constitutionality or unconstitutionality
18 to be subjected to the same kind of pejorative and I think
19 prejudicial preconditioning?

20 Look, if the statute is upheld, the case goes to
21 trial, results in a conviction, such other acts may well be
22 subject to consideration for sentencing purposes. But, you
23 know, that is several steps away. I will tell you for now I
24 am denying the motion. I am also striking the appearances,
25 if they were filed somehow on the docket, of Attorneys Wagner

1 and Cooper. They are not parties. I am not granting the
2 amici leave to proceed in the action.

3 The -- we have able counsel on both sides of this
4 case. And, frankly, to have something that comes loaded with
5 a position that may well be accurate in terms of conduct but
6 really plays no part, as I think of it, in terms of whether
7 this statute should be held constitutional or not because of
8 the legal doctrines that apply, I think that that is just not
9 in it. And so I am denying the motion for leave to file.

10 I shouldn't be misunderstood as staking out any
11 position at all on the merits because I am -- that is
12 something I am going to consider based upon the parties'
13 submissions. Again, I have able counsel on both sides.
14 Interesting, you know, Mr. Deutsch I think is -- you know, he
15 asserts as credentials that he is basically a first -- a
16 civil rights lawyer. And I don't know whether that justifies
17 the action or not, but I am going to deal with it on the
18 substantive merits.

19 So that is my say. And if somebody has something
20 to submit in face of a sort of steep hill that I have
21 identified here, I guess I would listen.

22 Cooper, anything?

23 MR. COOPER: Yes, your Honor?

24 THE COURT: Or have I said anything that is
25 unclear?

1 MR. COOPER: No, your Honor.

2 THE COURT: Okay. And counsel?

3 MR. DEUTSCH: Judge, just one.

4 THE COURT: Yes.

5 MR. DEUTSCH: In my motion I moved to strike the
6 motion for leave to file and the brief, both of which are
7 filed. And what concerns me --

8 THE COURT: Really?

9 MR. DEUTSCH: -- is that somebody --

10 THE COURT: Yes. Yes, I --

11 MR. DEUTSCH: -- may --

12 THE COURT: You know -- see, one of the problems --
13 and this is inherent in motions. Whenever there is a motion
14 for leave to file, I have often said that it has done the
15 deed because the judge always reads what has been submitted
16 -- or should read what has been submitted, and so you get a
17 leg up by just filing it. But I think that is -- that
18 situation is different where it is asking leave to file.

19 I, frankly, think the better practice when somebody
20 asks leave to file something is to tender a copy to the court
21 as a chambers copy but not place it of record because whether
22 it is going to be placed of record or not is, as I have said,
23 for the judge to decide, not the party.

24 And Mr. -- I think Mr. Deutsch has it right. So I
25 am going to grant the motion to strike the brief itself.

1 MR. DEUTSCH: Thank you.

2 THE COURT: Thank you, Judge.

3 MR. DEUTSCH: And the motion for leave, both of
4 them.

5 THE COURT: Yes.

6 MR. DEUTSCH: Yes. Thank you, Judge.

7 THE COURT: Thank you. Okay?

8 MR. COOPER: Yes, your Honor.

9 THE COURT: Thank you all.

10 MR. MEYER: Judge, there is just one other
11 housekeeping matter that is unrelated to the motion that was
12 up this morning.

13 THE COURT: Yeah, go ahead.

14 MR. MEYER: We originally had a status hearing set
15 for Friday morning at 9:00 o'clock. If you recall the
16 Government's response to the motion to dismiss is due by the
17 close of business today. We were all going to take a couple
18 days to review that and then decide on Friday whether or not
19 we were asking for leave to reply.

20 THE COURT: Oh, let me ask you, is it going to be
21 in hand today, do you think?

22 MS. BIESENTHAL: It will be.

23 THE COURT: And you are saying two days is not
24 enough?

25 MR. MEYER: No, two days is enough. I think at

1 some point that status was accidentally stricken off the
2 docket. I just wanted to make sure we were still set for --

3 THE COURT: Don't look at me.

4 THE CLERK: We can add it back.

5 MR. MEYER: Could we add it back?

6 THE COURT: Yeah, status hearing on Friday.

7 THE COURT: What?

8 THE CLERK: No, he said to add -- he said it was
9 stricken from the docket, so I said we could just add it
10 back.

11 THE COURT: I have here what Terry has written up
12 for Friday. Let me look here.

13 No, the last one, Terry, I have is Thursday's.
14 Okay. Well, what is the story, is it on or off for Friday?

15 THE CLERK: They say -- they want it to be on, so
16 we will --

17 THE COURT: No, no, I mean was there an order
18 striking it?

19 THE CLERK: I don't know. I can go back and look.
20 Yes, I have it crossed off.

21 THE COURT: Beats me.

22 I will see you Friday. Okay?

23 MR. MEYER: Thank you, Judge.

24 MR. DEUTSCH: Thank you, Judge.

25 MS. BIESENTHAL: Thank you, Judge.

1 THE COURT: Now, you will make sure I get a hard
2 copy so I get a chance to read it.

3 MS. BIESENTHAL: We will.

4 THE COURT: Yes, thank you.

5 MR. COOPER: Have a good holiday, your Honor.

6 MR. WAGNER: Happy holiday, your Honor.

7 THE COURT: Thank you.

8 (Which were all the proceedings heard.)

9 CERTIFICATE

10 I certify that the foregoing is a correct transcript
11 from the record of proceedings in the above-entitled matter.

13 s/Rosemary Scarpell /

14 Date: October 29, 2015

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